IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE: GARLOCK SEALING TECHNOLOGIES LLC, et al., Debtors.[1]	Case No. 10-BK-31607 Chapter 11 Jointly Administered

APPENDIX II

DEBTORS' REPLY TO COMMITTEE'S APPENDIX II

[1] The debtors in these jointly administered cases are Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company (hereinafter "Garlock" or "Debtors").

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APPENDIX II

Garlock has demonstrated that plaintiffs' firms routinely concealed exposure evidence that was material to Garlock's defenses. Garlock has presented this evidence at length in the estimation trial and will not reiterate it here, especially in light of the Committee's failure to offer trial testimony from the plaintiffs' firms involved in the concealment.

The Committee attempts to respond to Garlock's evidence in its Appendix II to its Post-Hearing Brief of the Official Committee of Asbestos Personal Injury Claimants for Estimation of Pending and Future Mesothelioma Claims (Docket No. 3198) (the "Committee's Appendix II"), which focused on the Designated Plaintiffs' cases.[2] The Committee's Appendix II points to no contrary evidence (because the Committee offered none), and as illustrated below, contains numerous factual errors and mischaracterizations. In many cases, the Committee employs a strategy of accusing Garlock of "gross mischaracterization" by distorting the record itself, a tactic that backfires upon close examination of the record. For the sake of brevity, Garlock's response in this Appendix II corrects only the most egregious factual errors in the Committee's Appendix II and groups these corrections by the firms which carried out the concealment. To address the remainder of the Committee's contentions, Garlock relies upon its briefing for the estimation trial; the comprehensive evidence it presented at trial; and its summaries of the Designated Plaintiffs' cases, trust distribution procedures, and bankruptcy voting procedures.[3]

Waters & Kraus Designated Plaintiffs

The Committee's inaccurate discussion of the Waters & Kraus Designated Plaintiffs exemplifies the mischaracterizations that pervade the Committee's Appendix II.

Concerning the *Treggett* case, for example, the Committee cites specific testimony from that trial for the proposition that "Garlock's expert stated that Navy specifications could be used to determine the brand of insulation" on the ship where Mr. Treggett worked.[4] This characterization of Garlock's expert's testimony in *Treggett* is simply wrong. Garlock's expert never testified that he could identify the brand of insulation on the ship. Rather, Mr. Treggett's attorney asked Garlock's expert whether he could identify the *content* of the products: "Anything that we could use to try to figure out what the actual asbestos *content* of those products would be?"[5] Garlock's expert, responding to this question, said "Yes, you can use Navy specifications, the *type* of insulation they used, which is *primarily amosite*."[6] Nowhere in that exchange did Mr.

[2] At trial, Garlock presented evidence about the practices of five prominent mesothelioma trial firms and one bankruptcy-claim "referral firm," as well as documentary evidence from fifteen plaintiffs (the "Designated Plaintiffs") represented by those firms.
[3] *See* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases (GST-8011); Debtors' Summary of Evidence Regarding Certain Trust Distribution Procedures (GST-8009); Debtors' Summary of Evidence Regarding Certain Voting Procedures and Ballot Certifications (GST-8010).
[4] Committee Appendix II at 5.
[5] *See* 9/28/04 Treggett Trial Tr. at 3381:15-20 (Testimony of Robert Sawyer, M.D.) (GST-5450) (emphasis added).
[6] *See id.* (emphasis added).

Treggett's attorney ask Garlock's expert whether he was able to identify the particular *brand* of insulation from Navy records alone.[7]

The Committee's discussion of the trust claims from the Waters & Kraus Designated Plaintiffs' cases also contains numerous errors and misleading statements.

In its discussion of the Treggett trust claims, for example, the Committee contends that those claims relied upon general exposures at pre-approved work sites and, therefore, they contained no new evidence of exposure. The Committee cites the testimony of Professor Brickman, maintaining that he "agreed that there was no new evidence of exposure in the trust claims that had not been served on the defendants in the tort suit."[8] The Committee's characterization of this issue is legally incorrect and factually misleading.[9]

Professor Brickman never agreed that there was no new evidence of exposure in the trust claims. Immediately preceding the exchange in question, Mr. Inselbuch, the Committee's attorney conducting the cross-examination, gave Professor Brickman the U.S. Gypsum and Babcock & Wilcox trust claim forms to review.[10] Mr. Inselbuch asked Professor Brickman, "Is there anything new in there about exposure that wasn't served on the defendants in the tort system in the tort case?"[11] Professor Brickman responded that he didn't know.[12] Thus, Professor Brickman did not make the concession that the Committee alleges.

Furthermore, Professor Brickman testified on redirect that trust claims did provide new exposure information not disclosed in the tort system.[13] As noted by Professor Brickman, the Babcock & Wilcox trust claim that the Committee chose to use as an example at trial was a worksite-based claim that contained *specific* admissions of exposure to specific products—"BW Boilers and asbestos cloth"—that were never disclosed in the *Treggett* tort case.[14] Later in his testimony, Professor Brickman quoted common language from trust claim forms that proves worksite-based claims are assertions of exposure: "*If the site you are alleging exposure to B&W products and services* is not on the approved site list, provide independent documentation."[15]

The Committee's attempts to rationalize the omitted disclosures reflected in the *Treggett* trust claims based on Mare Island Shipyard exposures are equally unpersuasive. Garlock

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[7] *See* Debtors' Response to Post-Trial Briefs of Committee and FCR ("Debtors' Response Br.") at Part I.C.3 (discussing the impact of non-disclosure).
[8] Committee Appendix II at 7-8.
[9] *See* Debtors' Response Br.at Part I.C.4 (describing how trust claims, ballots, and Rule 2019 statements are verified statements of exposures to bankrupts' products).
[10] Tr. 1315:7-9 ("I'm going to give you back B&W and USG, and I'm going to ask you the same question. Isn't it true that Garlock didn't learn anything new?).
[11] Tr. 1316:25-1317:2.
[12] Tr. 1317:3-7 ("Well, it's a claim of exposure that was not – I'm trying to -- I don't -- I don't know -- I don't offhand see any information that would be additional so I really -- and I haven't read the excerpts from the depositions that are contained at the end of the form.").
[13] Tr. 1320:10-1323:10.
[14] Treggett Babcock & Wilcox Trust Claim at Waters 02491 (GST-5481) ("Name of B&W product(s), if applicable, to which the injured party is alleging exposure: BW Boilers and asbestos cloth.").
[15] Tr. 1322:6-23 (Brickman) (emphasis added) (quoting Treggett Babcock & Wilcox Trust Claim at Waters 02490 (GST-5481)); *see also* USG - Trust Claim Form at 2 (GST- 1598).

established that Mr. Treggett filed six trust claims based, in part, upon exposures at the Mare Island Shipyard which were not disclosed in the tort system.[16] The Committee takes particular issue with this proof. The Committee argues that Mr. Treggett's testimony about Mare Island did not contradict his trust filings because Mr. Treggett testified that his classroom at Mare Island was in the middle of the active shipyard.[17]

The Committee's explanation for the six claims Mr. Treggett filed based on exposures at Mare Island is meritless. Mr. Treggett's story at trial was that, at Mare Island, he performed classroom work, did not board ships, and saw ship construction and overhaul only from a distance.[18] When asked the location of his classroom in relation to where the ships were being repaired, Mr. Treggett stated (within the testimony that the Committee cites) that "I wouldn't characterize it as close proximity."[19] One ship that Mr. Treggett remembered at Mare Island was the USS *Kamehameha*. Mr. Treggett was quick to note that, although he could see it, "[w]e weren't allowed in the area where it was."[20] To the contrary, in his claim forms based on Mare Island exposure, Mr. Treggett's same lawyers represented that he was exposed at Mare Island from August 1965 to February 1966 when "employed in an industry or occupation such that the injured party worked on a regular basis in close proximity to workers who did one or more of . . . three activities": "handl[ing] raw asbestos fibers on a regular basis"; "fabricat[ing] asbestos-containing products such that the injured party in the fabrication process was exposed on a regular basis to raw asbestos fibers"; and "alter[ing], repair[ing] or otherwise work[ing] with an asbestos-containing product such that the injured party was exposed on a regular basis to asbestos fibers."[21] Mr. Treggett's testimony in his action against Garlock denying or minimizing the possibility of exposure to asbestos at Mare Island cannot be reconciled with his later assertions of exposures in the trust system.[22]

Regarding the *Williams*, *Taylor*, and *Steckler* cases, the Committee vainly attempts to portray the numerous trust claims as not including any new exposure evidence.[23] The plain language of the trust claims, however, contradicts the Committee's characterization.[24] For example, Mr. Williams' trust claims affirmatively disclosed exposure to specific products, such as Carey Insulation[25] and Super 66 insulation.[26] Similarly, Mr. Taylor's trust claims contained

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[16] Treggett ABB Lummus Trust Claim at Waters 02350 (GST-5478); Treggett Armstrong World Industries Trust Claim at Waters 02423 (GST-5480); Treggett Combustion Engineering Trust Claim at Waters 02520 (GST-5483); Treggett Fibreboard Trust Claim at Waters 02561 (GST-5485); Treggett Owens Corning Trust Claim at Waters 02685 (GST-5489); Treggett Western Asbestos Trust Claim at Waters 02826 (GST-5493).
[17] Committee Appendix II at 8.
[18] 2/11/04 Treggett Dep. at 261-63 (GST-5432); 9/16/04 Trial Tr. at 1238-40 (Testimony of Mr. Treggett) (GST-5444).
[19] 9/16/04 Trial Tr. at 1239:26-1240-3 (Testimony of Mr. Treggett) (GST-5444).
[20] 9/16/04 Trial Tr. at 1239:14-1239:25 (Testimony of Mr. Treggett) (GST-5444).
[21] *See, e.g.*, Treggett FB Trust Claim at Waters 02561-63 (GST-5485); Treggett Lummus Trust Claim at Waters 02350 (GST-5478).
[22] The Committee attempts to explain some of the inconsistencies between Mr. Treggett's trust claims and his testimony in his tort action, hypothesizing that a paralegal must have mistakenly filled out a form. Committee Appendix II at 8. This rationalization is nothing more than unfounded speculation.
[23] Committee Appendix II at 13, 16-17, 20.
[24] Debtors' Response Br. at Part I.C.4.
[25] Williams Celotex Trust Claim at Waters 03666 (GST-6050) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: Carey insulation.").

affirmative admissions of exposure to asbestos products, including Kaylo and Pabco pipe covering[27] and Kaiser Vee Block Mix.[28] Equivalent admissions of exposure were disclosed in Mr. Steckler's trust claims, including to Careytemp pipe covering and block insulation[29] and Kaylo pipe covering, block insulation, and insulating cement.[30] None of these exposures were disclosed to Garlock in the *Williams*, *Taylor*, and *Steckler* tort cases.[31]

Garlock offered evidence at trial that this conduct was a pattern with Waters & Kraus and its clients. One example was *Stoeckler v. American Oil Co.*,[32] where the tort defendants discovered three days into trial that Waters & Kraus had failed to disclose the plaintiff's exposures to the products of several insulation companies for which Waters & Kraus itself had previously filed claims.[33] Jeffrey Simon, then at Waters & Kraus, represented Mr. Stoeckler.[34] In *Stoeckler*, Mr. Simon and his co-counsel made the Committee's identical arguments that the claims were worksite-based, did not constitute assertions of actual exposure, and therefore provided no new exposure evidence.[35] In response to these arguments, the presiding judge disagreed, emphasizing that the claim forms themselves required claimants to provide information about exposures to products for which the trusts were responsible and that Mr. Stoeckler had identified specific trust products.[36] The *Stoeckler* trial terminated immediately after the revelation of the trust claims.[37]

Finally, Mr. Kraus, like other plaintiffs' attorneys,[38] articulated a deliberate strategy to delay the filing of trust claims. Despite the Committee's claims that Garlock mischaracterized the testimony of Mr. Kraus, Mr. Kraus plainly admitted that he will defer the filing of a trust claim if, in his judgment, it would "benefit the litigation case" and it were lawful to do so.[39] According to Mr. Kraus, it would be typical for his firm to delay whenever filings could lead to

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[26] Williams Eagle-Picher Trust Claim at Waters 03775 (GST-6052) ("Name of Eagle-Picher Product(s) to which injured party was exposed: Super 66 insulation.").
[27] Taylor Owens Corning Trust Claim at Waters 01847 (GST-4479) ("If this exposure involved products manufactured . . . by [Owens Corning/Fibreboard] or any entity . . . for which [Owens Corning/Fibreboard] is responsible . . . identify the products . . . : Kaylo, Pabco.").
[28] Taylor Kaiser Aluminum Trust Claim at Waters 01762 (GST-4475) ("Mr. Taylor was present while others worked with Kaiser Vee Block Mix during overhaul.").
[29] Steckler Celotex Trust Claim at Waters 00838 (GST-4357) ("Name of Celotex or Carey Canada product(s) or operations to which injured party was exposed: Careytemp pipe covering and block insulation.").
[30] Steckler Owens Corning Trust Claim at Waters 01172 (GST-4368) ("If this exposure involved products manufactured . . . by [Owens Corning/Fibreboard] or any entity . . . for which [Owens Corning/Fibreboard] is responsible . . . identify the products . . . : Owens-Corning products including but not limited to Kaylo Pipe Covering, Block Insulation, and Insulating Cement.").
[31] *See* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases (GST-8011).
[32] No. 23451 (Tex. Dist. Ct. Angelina County 2004).
[33] Tr. 1183:5-16 (Brickman).
[34] *See* Transcript of Trial at 2, *Stoeckler v. Am. Oil Co.*, No. 23451 (Tex. Dist. Ct. Angelina County Jan. 28, 2004) (GST-0661).
[35] *See id.* at 70-75.
[36] *See id.* at 73.
[37] *See id.* at 74; Tr. 1185:21-23 (Brickman).
[38] For a more in-depth discussion of the deliberate delaying strategy adopted by well-known members of the plaintiffs' bar, see Debtors' Response Br. at Part I.C.3.
[39] Kraus Dep. at 40:22-24, 41:1-3, 41:5-7, 41:9-11, 41:13-14, 41:16-18, 41:20-22, 41:24-42:14 (responding, when asked when Waters & Kraus would delay the filing of a trust claim, "[i]f in my judgment it would benefit the litigation case to delay the filing of a claim, and it was lawful to delay filing the claim, we would do that.").

"plac[ing] the bankrupt defendants' products on the verdict form and allow[ing] the defendants in the litigation case to argue for a smaller share of the several liability."[40]

Simon Greenstone Panatier Bartlett Designated Plaintiffs

The Committee's discussion of the Designated Plaintiffs represented by the Simon Greenstone Panatier Bartlett firm (formerly Simon Eddins Greenstone) ("Simon Greenstone") likewise contains numerous errors and flawed assertions.

Concerning the *White* case, for instance, the Committee mischaracterizes Mr. White's Babcock & Wilcox and Bartells trust claims based on his Coast Guard service.[41] The Committee claims that Mr. White's supporting affidavits attesting to personal knowledge of asbestos exposure in the Coast Guard[42] did not directly contradict Mr. White's deposition testimony that he was not exposed in the Coast Guard.[43] To support this claim, the Committee points to Mr. White's answer, "Good grief. I don't want to guess," to a question about whether he remembered insulated pipes on his ship in the Coast Guard.[44] This statement, the Committee concludes, indicates that there was no "flat denial" of exposure to asbestos, as Garlock maintained.[45]

On the exact same page of Mr. White's deposition transcript that the Committee cites, however, and immediately preceding the Committee's quoted response, the following exchange occurred:

> Q. Do you believe you were exposed to asbestos containing products when you were in Coast Guard?
> THE WITNESS: No.[46]

Mr. White followed this up with an additional denial of seeing anyone remove "pipe or block insulation in any way, shape or form" while in the Coast Guard.[47] It is difficult to imagine how Mr. White's repeated denials of exposure when he was in the Coast Guard could be any more conclusive. Thus, the Committee's position borders on the absurd when it argues that Mr. White's "testimony is far from the flat denial of exposure that Garlock takes it for."[48]

Moreover, the concealment of Mr. White's exposure in the Coast Guard was consistent with his general concealment of asbestos exposure while aboard ships. During the case against Garlock, Mr. White and his lawyers were firm that Mr. White was not exposed to asbestos while

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[40] Kraus Dep. at 42:7-10.
[41] White Babcock & Wilcox Trust Claim (GST-5981); White Bartells Trust Claim (GST-5994).
[42] Mr. White swore that "As a Fire Control/Radar Officer aboard these ships [in the Coast Guard], I was exposed to asbestos containing materials such as, but not limited to, fireproofing, boilers, pipecovering, block, cement, gaskets, insulation and refractory, while working with and in the vicinity of insulators, repairmen and other tradesmen." Affidavit of Charles C. White (Aug. 12, 2008) at Simon 27505 (Babcock & Wilcox) (GST-5981); Affidavit of Charles C. White (Aug. 12, 2008) at Simon 27977 (Bartells) (GST-5994).
[43] Committee Appendix II at 25.
[44] 8/11/06 White Dep. at 168:13-15 (GST-5612).
[45] Committee Appendix II at 25.
[46] 8/11/06 White Dep. at 168:3-7 (GST-5612).
[47] *Id.* at 168:9-12.
[48] Committee Appendix II at 25.

working aboard ships.[49] This position made it very difficult for Garlock to offer evidence that Mr. White was exposed to pipe covering and other insulation prevalent on ships. But Mr. White's sworn statements denying ship exposures were in sharp contrast to his wife's affidavit filed in support of a trust claim in which she swore that Mr. White was exposed to asbestos, including pipe insulation, aboard ships and that he had told her this insulation caused his mesothelioma.[50]

Further, the Committee's purported explanation for why Mr. White's attorneys did not file trust claims during the tort action—because his case was on a "fast-track status"—also strains credulity.[51] Mr. White had *two* different, independent law firms handling his trust claim filings—the Early firm and the Mandelbrot firm. As a result, the Simon Greenstone firm's "focus" on the tort case is nothing more than an *ex post* attempt to obscure the well-established strategy to delay trust claim filings in order to conceal exposure evidence.[52]

Finally, the Committee attempts to distort Mr. Magee's testimony concerning *White*. Mr. Magee used the *White* case as an example of evidence suppression, emphasizing the inconsistency between Mr. White's testimony about not working on ships and his trust claims based upon exposure aboard ships.[53] The Committee attempts to deflect attention from this concealment evidence by conjuring up an alleged "gross mischaracterization."[54]

The Committee states that, "At trial, Mr. Magee asserted that Mr. White had said 'that they worked in a shop and the equipment was brought to them with the asbestos insulation cleaned off.'"[55] The Committee declares that Mr. Magee's testimony about the *White* case was a "gross mischaracterization."[56]

The Committee's spin on Mr. Magee's testimony is nothing more than a diversionary tactic. Mr. Magee's quoted statement was not even in response to a question about *White*. Indeed, Mr. Guy expressly asked Mr. Magee to answer the question without reference to "those cases" (meaning cases like *White*)[57]—instead, Mr. Guy asked Mr. Magee to make a general statement as to the "vast majority of cases":

> Q. Right. And I know that the debtors were extremely frustrated with *those cases* and I get that, but *I want to focus on the vast majority of the cases in the vast majority of the instances* when these individuals, many of whom had been in the

[49] 8/11/06 White Dep. at 112:7-113:6 (GST-5612).
[50] Declaration of Barbara Lorton (Apr. 1, 2010), at Simon 27923 (GST-5991) (declaring, in support of a Western Asbestos trust claim, that Mr. White "was exposed to asbestos while working on the USS *Mountrail*" and that Mr. White "indicated to me that he believed that his exposure to pipe insulation while on the USS *Mountrail* APA-213 while it was at the Norfolk Naval Shipyard in Norfolk, VA was contributory to his Mesothelioma.").
[51] Committee Appendix II at 23.
[52] *See* 1/4/13 Simon Dep. at 86:19-87:6.
[53] Tr. 3084:7-3086:5 (Magee).
[54] Committee Appendix II at 22.
[55] *Id.* at 22.
[56] *Id.* at 22.
[57] Tr. 3133:22-3134:18 (citing the *White* case as an example).

> armed services, were questioned. They said yeah, I worked around asbestos. It was dusty. It was a snow cloud. They said that, didn't they?[58]

As requested, Mr. Magee's response, from which the Committee quotes, was expressly in the context of the "vast majority" of cases, not *White*:

> A. I wouldn't say that the *vast majority did*. Some did. They used to say it all the time in the '90s. They said it less in the 2000s. Even when they said they worked around insulation, they minimized it. And certainly by the time of trial the testimony was that it didn't exist or they didn't recall it ever being in their breathing zone, or it was contained in safe boots, or that they worked in a shop and the equipment was brought to them with the asbestos insulation cleaned off or whatever -- excuse me whatever other story would help them target Garlock and minimize the exposure to the asbestos insulation.[59]

Accordingly, given the context, the Committee is stretching to construe Mr. Magee's statement as a reference to *White,* much less a "gross mischaracterization." *White* was not the only Garlock case in which a plaintiff tried to minimize insulation exposure by claiming he primarily worked in a shop.

Further, the Committee's claim of a "gross mischaracterization" rings hollow in light of how Mr. White's own counsel described the case. Mr. Simon in his deposition offered the following description of *White*:

> And in the Charles White case, he was a civilian contractor who tore down equipment in a machine shop in Norfolk. And I can't remember whether or not thermal insulation exposures are at issue in that case. *Because it would seem to me that the thermal insulation would have been taken off, had there been any, by the time it got all the way from ship to machine shop,* but I don't know that off the top of my head.[60]

Mr. Simon's description—"the thermal insulation would have been taken off"—is materially similar to Mr. Magee's description—"the asbestos insulation cleaned off"—assuming *arguendo* that Mr. Magee was specifically referring to *White*. Gross mischaracterization is a double-edged sword.

Most importantly, *White* stands as a strong example of concealment. The Committee's diversions aside, the main point of *White* is that in the tort case Mr. White *denied* exposure aboard ships, but in his trust claims he *claimed* exposure aboard ships. Thus, Mr. Magee's testimony, both with respect to the "vast majority" of cases and the specific Designated Plaintiff cases, painted a compelling portrait of the evidentiary distortions that Garlock faced in the tort system.

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[58] Tr. 3134:19-25 (emphasis added).
[59] Tr. 3135:1-12 (Magee) (emphasis added).
[60] 1/4/13 Simon Dep. at 43:1-9 (emphasis added).

The Committee's summary of the *Ornstein* case warrants particular attention in light of its attempts to obfuscate the real issues. The Committee attempts to argue that Mr. Ornstein's non-specific discovery responses, together with Garlock's institutional knowledge and generic expert reports and ship records, made Garlock "fully aware" of Mr. Ornstein's exposures.[61] But this characterization is inconsistent with the factual record, as detailed below:

- Mr. Ornstein claimed at his deposition that he never saw anyone installing or removing pipe insulation during the overhaul of the USS *Estes*.[62] When it came time to file his trust claim, however, Mr. Ornstein swore, under penalty of perjury and upon personal knowledge, that on board the ships he personally "would remove and replace insulation," including pipe insulation such as Armstrong 85% Magnesia Pipe Covering and Block, and Armstrong Hi-Temp pipe covering.[63]

- Mr. Ornstein testified that he never saw a boiler, was never in a boiler room, and was never exposed to asbestos from a boiler while he served on the USS *Estes*.[64] Yet, Mr. Ornstein later supported his Combustion Engineering trust claim with a sworn declaration attesting to personal knowledge of exposure to Combustion Engineering Boilers during his service on the USS *Estes*.[65]

- When asked whether he ever saw anything manufactured by a company called Worthington on the USS *Estes* or at any point during his service in the Navy, Mr. Ornstein testified, "No. I don't recall that name."[66] Mr. Ornstein then supported his DII (Halliburton) trust claim with a sworn declaration based on his "personal knowledge" that he was exposed to Worthington Pumps on the USS *Estes* and the USS *Duval County*.[67]

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[61] Committee Appendix II at 31-33; *c.f.* Debtors' Response Br. at Part I.C.3.

[62] 6/3/08 Ornstein Dep. at 237:12-19 (GST-3832) ("Q. Okay. In any event, did you see pipe covering being removed? A. Did I see pipe covering -- Q. During the overhaul on the [USS] *Estes*? A. No, I don't believe I did see any. Q. Did you see any pipe covering being installed during the overhaul on the [USS] *Estes*? A. No."); 6/5/08 Ornstein Dep. at 527:6-14 (GST-3834) ("Q. With you own eyes did you ever see anyone removing insulation off of the pipes? A. No. Q. With your own eyes did you ever see anyone applying or installing insulation to pipes? A. No.).

[63] Declaration of Howard Ornstein (June 18, 2009), at Simon 28055 (GST-3873). The Committee appears to concede that Mr. Ornstein's AC&S trust claim is an illustration of the systemic inconsistencies between plaintiffs' disclosed exposures in the tort and trust systems, offering only that Mr. Ornstein's declaration accompanying his AC&S trust claim is "incorrect" and that the circumstances of its drafting are "unexplained." Committee Appendix II at 33.

[64] 6/2/08 Ornstein Dep. at 39 (GST-3831) ("Q: Did you ever see that boiler [on the USS *Estes*]? A. No."); 6/3/08 Ornstein Dep. at 107 (GST-3832) ("Do you have any reason to believe you may have been exposed to any asbestos in the engine room or the fire room or the boiler room on the [USS] *Estes*? A. No."); *id.* at 152 ("[T]he only place that I don't recall going down to was the boiler room or the engine room."); 6/4/08 Ornstein Dep. at 321-22, 363-64 (GST-3833) ("Q. To the best of your knowledge, did you ever work with or around any type of boilers when you were on the [USS] *Estes*? A. No."); 6/5/08 Ornstein Dep. at 527 (GST-3834) ("[Y]ou've never been around the boilers; right? A. Right.").

[65] Declaration of Howard Ornstein (Mar. 12, 2009) at Simon 28226 (GST-3878) (attesting that "[d]uring my service in the Navy, I had exposure prior to December 31, 1982, for at least six months, to the following Combustion Engineering asbestos or asbestos-containing product(s): Combustion Engineering Boilers.").

[66] 6/4/08 Ornstein Dep. at 299 (GST-3833).

[67] Declaration of Howard Ornstein (Mar. 12, 2009) at Simon 28372 (GST-3880).

- Mr. Ornstein filed numerous other trust claims, many accompanied by his sworn declarations, containing specific allegations of exposure that were never disclosed in the tort system.[68]

These discrepancies between the tort and trust systems exemplify the significant omissions present in the Designated Plaintiffs' cases.

Moreover, the Committee's contentions about Mr. Ornstein's sworn declarations carry little weight. Mr. Simon opined that Mr. Ornstein's declarations "would have been more aptly stated as based on information and belief."[69] Seizing on this, the Committee argues that these declarations should be viewed as nothing more than a recognition of information contained in Navy records, which purportedly were only reviewed after the suit was settled.[70] The problem with the Committee and Mr. Simon's position is simple: Mr. Ornstein's declarations never premised his allegations of exposure "upon information and belief." To the contrary, Mr. Ornstein executed his declarations "based upon [his] personal knowledge"[71] of exposures to specific asbestos-containing products.[72] Even Mr. Simon acknowledged the inconsistencies between Mr. Ornstein's positions in his tort action and his trust claims.[73] Indeed, the declarations—like Mr. Ornstein's statement that he personally removed and replaced pipe insulation—do not provide the type of information that is made on information and belief. As a result, while the Committee now wishes that the numerous declarations said something different, they cannot change the unequivocal admissions that they contain. This case thus highlights the fundamental problem: claimants such as Mr. Ornstein were swearing to one thing in the tort system and another in the trust system, depending on which story was needed to increase their recovery.

Belluck & Fox Designated Plaintiffs

The Committee's descriptions of the *Flynn*, *Homa*, and *Beltrami* cases fail to refute Garlock's evidence that Belluck & Fox concealed material exposures. The Committee contends that Belluck & Fox disclosed these plaintiffs' insulation exposures in discovery, although Belluck & Fox did not identify any insulation brands or manufacturers. It then argues that this

[68] *See, e.g.*, Declaration of Howard Ornstein (Mar. 12, 2009) at Simon 28488 (Eagle Picher 85% Magnesia Pipe Covering and cement) (GST-3882); Declaration of Howard Ornstein (Mar. 12, 2009) at Simon 27118 (Keene pipe covering and insulation) (GST-3870). For additional instances where Mr. Simon admitted to discrepancies between a plaintiff's testimony during a tort action and trust claims, see Debtors' Appendix of Witness Trial Testimony, Summary of Simon Greenstone Panatier Bartlett 30(b)(6) Witness.
[69] See 1/4/12 Simon Dep. at 156:11-157:4.
[70] Committee Appendix II at 33.
[71] *See, e.g.*, Declaration of Howard Ornstein (June 18, 2009) at Simon 28055 (Armstrong 85% Magnesia Pipe Covering and Block and Armstrong Hi-Temp Pipe Covering) (GST-3873).
[72] *See, e.g.*, Ornstein Armstrong World Industries Trust Claim at Simon 28125 (GST-3876) (declaring "I was exposed to Armstrong asbestos containing products while working on the USS *Estes*" and "I had exposure prior to December 31, 1982, for at least six months, to the following Armstrong asbestos or asbestos-containing product(s): Armstrong 85% Magnesia Pipe Covering and Block"); Ornstein Combustion Engineering Trust Claim at Simon 28208 (GST-3878) (declaring "I was exposed to Combustion Engineering asbestos containing products while working on the USS *Estes*" and "I had exposure prior to December 31, 1982, for at least six months, to the following Combustion Engineering asbestos or asbestos-containing product(s): Combustion Engineering Boilers").
[73] 3/26/13 Simon Dep. at 278:15-16.

information, together with available Navy ship records and transcripts of depositions from unrelated cases of workers who worked at the same shipyards,[74] constituted full disclosure of asbestos exposure evidence.

For instance, the Committee contends that, in the *Flynn* case, "Mr. Flynn freely disclosed his exposures to insulation and other asbestos products in his interrogatories and during his deposition."[75] This "free" disclosure only included generic references to insulation exposure—the Committee cannot point to any brand of insulation that Mr. Flynn identified as being in his breathing zone. Moreover, the Committee's claim that "voluminous" ship records gave Garlock "other evidence of exposure"[76] is incorrect. Under New York law, ship records that merely place products on a ship on which a plaintiff served are insufficient to prove the plaintiff's exposures to those products.[77] As Garlock's expert, John Turlik, testified at trial, Garlock's defenses are severely weakened without specific exposure information.[78]

The limited disclosures in *Flynn* stand in stark contrast to the following specific and material admissions that Mr. Flynn's attorneys made in the trust system:

- "Name of Celotex or Carey Canada product(s) or operations to which [Mr. Flynn] was exposed: insulating cement, fireproofing, [and] pipecovering"[79];

- "Name of Eagle-Picher product(s) to which [Mr. Flynn] was exposed: insulating cement[] [and] fireproofing"[80]; and

- Mr. Flynn "would remove and replace asbestos containing insulation products including [Kaiser Vee Block Mix and Kaiser Plastic Chrome Ore]."[81]

These specific exposures—which are in addition to other exposures evidenced by Mr. Flynn's other trust claims, ballots and Rule 2019 statements—would have been far more

[74] The Committee claims that Mr. Turlik admitted at the estimation trial that Garlock's experts have relied on these types of co-worker depositions. Committee Appendix II at 37. Mr. Turlik did not admit this—in fact, he said only that Garlock's experts can rely on general hearsay for their opinions. Tr. 2348:21-23 (Turlik). Even if Garlock's experts did rely on such depositions, admissions from plaintiffs that placed specific brands of insulation in their breathing zone—the very disclosures that were made in many trust claims—are critical to Garlock's defense. Tr. 2318:9-11 (Turlik) ("[T]he more exposures we get, the more identification we get, the better our defenses are, especially the low-dose defense because it shows the volume of exposure").
[75] Committee Appendix II at 37.
[76] *Id.* at 35-36.
[77] *Krameisen v. Air & Liquid Sys. Corp.*, No. 190429/10, 2012 NY Slip Op 30248(U) (N.Y. Sup. Ct. Feb. 1, 2012) (Heitler, J.) ("[P]laintiff submits ship records which purport to demonstrate that Crane Co. valves were present aboard the USS *Leyte* and USS *Kula Gulf* during the relevant time period. However, the mere presence of an asbestos-containing product at the plaintiff[']s work place is not sufficient to show proximate cause.").
[78] Tr. 2318:9-11 (Turlik) ("[T]he more exposures we get, the more identification we get, the better our defenses are, especially the low-dose defense because it shows the volume of exposure").
[79] Flynn Celotex Trust Claim at Waters 02988 (GST-2781).
[80] Flynn Eagle-Picher Trust Claim at Waters 03007 (GST-2782).
[81] Flynn Kaiser Aluminum Trust Claim at Waters 03086 (GST-2786).

valuable to Garlock's attorneys and experts than a deposition from a random worker at a shipyard, dated ship records,[82] or generic insulation disclosures. Most importantly, they put specific brands of amosite insulation directly in Mr. Flynn's breathing zone, exposure that was never disclosed in the tort system.

In *Homa*, the Committee asserts that "evidence of other exposures did little to reduce Garlock's trial risk" in New York.[83] To support this claim, the Committee relies on only one case, later overturned on appeal, where a jury found Garlock reckless, and therefore jointly and severally liable.[84] But Mr. Turlik refuted this point at trial: "especially in a state like New York . . . the more exposures we get, the more identification we get, the better our defenses are, especially the low-dose defense because it shows the volume of exposure. But in New York we also are allowed to put the bankrupts on the verdict form."[85] Thus, Mr. Turlik explained that, if plaintiffs conceal evidence of their exposures to bankrupt entities' products and keep these entities off the verdict form, "our low-dose defenses [are] diminished, our Chrysotile defense is somewhat diminished, and also that the verdict form itself is going to be limited and, thus, expose[s] us to a potentially higher verdict. That causes a higher trial risk and a higher settlement value."[86]

Garlock's trial record also rebuts the Committee's contention that evidence of other exposures did not reduce Garlock's trial risk. In the *Simpson* case in New York, the plaintiff disclosed, during discovery, exposure to thermal insulation made by bankrupt entities.[87] With this evidence, Garlock had a strong case to take to the jury. The verdict confirmed Garlock's confidence and reliance on its defenses when a jury has a complete picture of a plaintiff's exposures. The jury assigned 87% of the fault in the case to the bankrupt entities, such as Johns-Manville, Pittsburgh Corning and Owens Corning, and only 2% to Garlock.[88] The *Simpson* verdict proves that evidence of other exposures greatly reduced Garlock's trial risk in New York and in other jurisdictions.[89]

Similarly to *Flynn*, the Committee contends that generic insulation exposures, depositions from random shipyard employees, and ship records show that "Garlock was aware of Mr. Homa's potential other exposures before it settled."[90] The Committee notes that, based on this information, Garlock proposed putting several bankrupt entities on the *Homa* verdict form.[91] But,

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[82] The Committee contends that Garlock failed to produce in discovery in this proceeding reports that it had McCaffery & Associates prepare about the products used on Essex-class ships. Committee Appendix II at 36. To the contrary, Garlock conducted a diligent search during discovery to find responsive documents and fully complied with its production obligations. Garlock did not find, and thus was not able to produce during discovery, the reports that the Committee references.
[83] Committee Appendix II at 39.
[84] *Id.* at 39.
[85] Tr. 2318:8-13 (Turlik).
[86] Tr. 2318:16-20 (Turlik).
[87] Tr. 2273:5-14 (Turlik).
[88] Simpson Verdict Sheet at GST-0117528-30, *Simpson v. Garlock Sealing Techs., LLC*, No. 2008-0511 (N.Y. Sup. Ct. Aug. 28, 2009) (GST-1253).
[89] Tr. 2273:5-16 (Turlik).
[90] Committee Appendix II at 40.
[91] *Id.* at 42.

as explained above, this information was materially different than the specific admissions of exposure in Mr. Homa's trust claims.[92]

The Committee also attempts to excuse Belluck & Fox's non-disclosure of specific thermal insulation exposures in Mr. Homa's interrogatory responses because they "were prepared shortly after Mr. Homa retained" the firm.[93] The record shows, however, that Belluck & Fox knew about these exposures at the time it prepared Mr. Homa's discovery responses. Stephen Cooper—the 30(b)(6) designee of the David Law Firm, which referred Mr. Homa's case to Belluck & Fox—testified that his firm had enough information to file Mr. Homa's trust claims against the bankrupts' successor trusts not very long after Mr. Homa came to that firm.[94] Further, when the David Law Firm referred Mr. Homa's case to Belluck & Fox, it gave Belluck & Fox the case memo that it drafted to reflect Mr. Homa's asbestos exposures.[95]

The Committee even tried to defend Belluck & Fox's incomplete interrogatory responses in *Homa* by citing Mr. Belluck's assertion that it is not common in New York state practice to supplement interrogatory responses.[96] But the Committee and Mr. Belluck are wrong. No matter what Mr. Belluck thinks New York common practice is, New York law requires a party to supplement a discovery response promptly after it "obtain[s] information that the response was incorrect or incomplete when made, or that the response, though correct and complete when made, no longer is correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading."[97] Thus, even if Belluck & Fox learned about Mr. Homa's thermal insulation exposures after it served interrogatory responses, it was under a duty to supplement these responses with correct and complete information.

Further, the Committee incorrectly states that "Mr. Belluck testified that Garlock was not focused on ascertaining the specific products to which Mr. Homa was exposed when it settled the case."[98] The Committee does not provide a citation for this proposition, and none of Mr. Belluck's testimony supports this point. In fact, the *Homa* record shows that the opposite was true—Garlock attempted to link Mr. Homa's disease to specific thermal insulation products at

[92] *See, e.g.*, Homa Plibrico Trust Claim at David 01592 (GST-3608) ("Name of all Plibrico Asbestos Trust products to which [Mr. Homa] was exposed: Pilsulate Insulating Cement #101."); Homa G-I Holdings Trust Claim at David 00809 (GST-3598) ("Name of all G-I Holdings Inc. Asbestos Personal Injury Settlement Trust products to which [Mr. Homa] was exposed: #115 Insulating Cement.").
[93] Committee Appendix II at 40.
[94] Cooper Dep. at 73:19-22 ("Q. So as I understood your testimony, your firm had enough information as of—perhaps as early as March 2008 to make many of the claims that are listed here; is that right? A. I'm not sure about the March part, but we would have gathered information, you know, in the—the not so long-term after the case coming in that we would have been able to file these claims.").
[95] Cooper Dep. at 65:17-25.
[96] Committee Appendix II at 40; *see also* Belluck Dep. at 147:24-148:2.
[97] N.Y. C.P.L.R. § 3101(h); *see also Friendship, Inc. v. Wu*, 166 Misc. 2d 352, 356, 633 N.Y.S.2d 743, 746 (N.Y. Civ. Ct. 1995) (recognizing duty to supplement interrogatories under section 3101(h)).
[98] Committee Appendix II at 38.

trial, including during Garlock's opening statement.[99] At his deposition, Mr. Belluck admitted that this was Garlock's defense at trial.[100]

The Committee next questions Garlock's interpretation of the *Homa* record, taking issue with some of the companies and worksites that were concealed during the tort action.[101] The Committee points out that the tort defendants focused on asking Mr. Homa about bankrupt companies and not actual products at Mr. Homa's deposition.[102] Defendants did inquire thoroughly about bankrupt companies,[103] but defendants also followed-up with questions about key products, including Unibestos and Kaylo.[104] It would have been impossible for the defendants to ask Mr. Homa about each of the thousands of asbestos products to which he could have been exposed.[105] The Committee also contends that Mr. Homa's answer that he didn't "believe" he was exposed to asbestos at certain undisclosed worksites was not an affirmative denial of exposure.[106] Mr. Homa, however, flatly replied "No" to the following question: "Q. Do you believe that you were exposed to any form of asbestos while working in the Naval Hospital in Newport?"[107] Accordingly, the Committee's excuses for these discrepancies are baseless.

Next, the Committee contends that Garlock "grossly mischaracterized the testimony of both Mr. Cooper" and Mr. Belluck with respect to Mr. Homa's delayed trust claims.[108] The Committee argues that "Mr. Cooper said only that the decision of when to file Mr. Homa's trust claims was made in the best interests of the client, and that Belluck & Fox had input into the decision."[109]

The Committee, however, fails to mention key parts of Mr. Cooper's testimony that disprove its claim. First, Mr. Cooper admitted that the David Law Firm filed eight of Mr.

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[99] *See, e.g.*, Homa Trial Tr. at B&F0000946 (GST-2898) (providing part of Garlock's opening statement, which describes Mr. Homa's amosite insulation exposures and identifies potential exposures to Johns-Manville, Unibestos, Keene Co., and Eagle-Picher asbestos products).
[100] Belluck Dep. at 131:11-15, 335:2-8, 335:11-12.
[101] Committee Appendix II at 41, 45.
[102] *Id.* at 41.
[103] 6/18/08 Homa Dep. at 261-271 (GST-2897).
[104] *Id.* at 289:10-289:16.
[105] The Committee also quibbles with Garlock's position that Mr. Homa did not sufficiently identify his Combustion Engineering and Johns-Manville exposures. Mr. Homa, however, associated Combustion Engineering with "automatic controls" for boilers and never placed the products in his breathing zone: "Q. Combustion Engineering? A. Yes. Q. Do you associate that name with boilers? A. I believe they had something to do with automatic controls, if I'm not mistaken. Q. On the boilers? A. On the boilers. Q. You saw that name on the boilers on board ships that you served on? A. I believe so. I vaguely remember it." 6/18/08 Homa Dep. at 263:14-25 (GST-2897). For Johns-Manville, Mr. Homa testified that he associated the name with insulation but didn't recall whether he ever saw the Johns-Manville name on board any of the ships he served on. *Id.* at 265:18-266:1. Later, Mr. Homa testified that he did not have any knowledge that he worked with or around Johns-Manville insulated products. *Id.* at 288:16-22 (GST-2897). More importantly, Garlock should not have had to parse Mr. Homa's testimony in the way the Committee describes: Mr. Homa filed a Manville claim and never disclosed it or any Manville exposure, despite the fact that he had a duty to do so both in interrogatory answers and under the New York City Case Management Order that specifically requires all trust claims to be disclosed. *See* NYC Amended Case Management Order (Feb. 19, 2003) (GST-0401).
[106] Committee Appendix II at 45.
[107] 6/17/08 Homa Dep. at 75:23-76:1 (GST-3614).
[108] Committee Appendix II at 43.
[109] *Id.* at 43.

Homa's trust claims *the day after* the case had settled.[110] Belluck & Fox advised the firm of the case's settlement.[111] Second, the David Law Firm could have filed Mr. Homa's trust claims early on, which would have been its typical practice.[112] Third, the Committee omits that Mr. Cooper testified that "the litigators"—referring to the David Law Firm's co-counsel who try the case, such as Belluck & Fox in *Homa*—make the decisions to delay filing trust claims in a particular case.[113] This testimony, coupled with the testimony about Belluck & Fox's "input" into the decision to the delay Mr. Homa's trust claims,[114] leads to the reasonable inference that Belluck & Fox and its co-counsel "intended to file and could have filed" Mr. Homa's trust claims well before trial, but Belluck & Fox "instructed the David Firm not to file Trust claims before Mr. Homa's case was concluded."[115] Again, the David Firm filed multiple trust claims *the day after* the *Homa* case settled, strongly indicating deliberate delay.

The Committee's *Beltrami* summary also contains several incorrect factual assertions. Contrary to the Committee's statement that Mr. Beltrami did not specifically identify Garlock gaskets,[116] Mr. Beltrami's work history sheets, attached to his interrogatory responses, specifically identified Garlock gaskets exposure.[117] Moreover, even though Mr. Beltrami disclosed crocidolite exposure from Johns-Manville transite pipe, Mr. Beltrami's trust claims contained extensive disclosures of specific asbestos-product exposures that were concealed during tort litigation.[118] As noted previously, Mr. Turlik testified how this evidence, particularly in New York, would have materially changed Garlock's evaluation of the case.[119]

Williams Kherkher Designated Plaintiffs

The Committee's efforts to explain away the *Torres* omissions are also unavailing. First, Mr. Magee and Garlock did not suggest that Mr. Torres lied about his exposures, as the Committee insinuates. Rather, Williams Kherkher concealed asbestos exposure evidence that it knew about during the tort litigation. This is evident from the statement of a Williams Kherkher attorney at trial: "Now, what about other manufacturers? The only asbestos product Oscar actually worked with himself was the Garlock gaskets. The only blue African asbestos product Oscar used was the Garlock gasket."[120] In contrast to this position, Mr. Torres' trust claim forms,

[110] Cooper Dep. at 74:21-75:4.
[111] *Id.* at 75:5-8.
[112] *Id.* at 43:15-44:1, 73:15-22.
[113] *Id.* at 46:4-9, 11.
[114] *Id.* at 75:15-17.
[115] Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 14 (GST-8011).
[116] Committee Appendix II at 46.
[117] Plaintiffs' Response to Defendants' Fourth Amended Interrogatories and Request for Production of Documents at GST-0514147 (GST-1862).
[118] *See, e.g.*, Flynn Kaiser Aluminum Trust Claim at David 01918 (GST-1848) (disclosing direct exposure to Kaiser M-Block Insulation); Flynn Plibrico Trust Claim at David 01938 (GST-1850) (disclosing direct exposure to Pilsulate Insulating Cement #101).
[119] Tr. 2318:8-13, 19-20 (Turlik).
[120] 2/17/10 Torres Trial Tr. at 45:20-23 (GST-4850). Thus, when Mr. Magee said that "[Mr. Torres] claimed his only asbestos product exposure was to Garlock crocidolite gaskets," he did not misstate the record, but merely did not qualify his answer as to products that Mr. Torres directly worked with. Tr. 3082:15-20 (Magee).

filed by Williams Kherkher, revealed that Mr. Torres "handled raw asbestos fibers on a regular basis."[121]

Similarly, Garlock did not suggest Mr. Torres lied in his deposition when he could not identify Babcock & Wilcox. Instead, Garlock contends that Williams Kherkher concealed its knowledge about Mr. Torres' exposure to Babcock & Wilcox—which it acted on when filing Mr. Torres' Babcock & Wilcox trust claim *the day before* his deposition in which he denied knowing or recognizing the name Babcock & Wilcox.[122]

The Committee also reverts to exaggeration and diversion in its discussion of *Torres*. For instance, the Committee states: "On cross-examination by Garlock's attorney, Mr. Torres testified that it was like a 'snowstorm' when insulation was being cut."[123] But, Mr. Torres did not testify that cutting insulation was like a "snowstorm":

> Q. I've spoken with other pipe fitters at Union Carbide who described the conditions when the insulation was cut as looking like a snowstorm or like it was snowing. Is that how it looked to you?
> A. You see the sun—that the sun is over there and then you see a lot of little things.
> Q. And that would be particles or dust floating down through the air?
> A. Yes, *a little bit*, yes.[124]

This testimony hardly amounts to an assertion that "it was like a 'snowstorm.'"[125] More importantly, this tactic diverts attention from the key point, that Mr. Torres never identified the insulation brands or manufacturers against which he later made trust claims, thereby allowing his trial attorneys to argue, "The only asbestos product Oscar actually worked with himself was the Garlock gaskets."[126]

The Committee then summarizes disclosures made by Mr. Weikel, a witness deposed in *Torres* who worked at the Union Carbide plant where Mr. Torres worked.[127] The Committee asserts that Mr. Weikel identified Kaylo, Johns-Manville, Celotex, Carey, and A.P. Green insulation products as being "used by insulators in the presence of pipefitters such as Mr. Torres."[128] The Committee fails to mention, however, that Mr. Weikel did not know Mr. Torres and had no personal knowledge of his exposures.[129]

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[121] Torres Babcock & Wilcox Trust Claim at WK 0006 (GST-4927); Torres DII (Halliburton) Trust Claim at WK 0047 (GST-4928); Torres Owens Corning Trust Claim at WK 0092 (GST-4929). When confronted with these statements, Mr. Torres' attorney claimed that the "raw asbestos fibers" referred to asbestos from Garlock's gaskets—a remarkable statement given that gaskets are a finished and encapsulated product. 1/11/13 Chandler Dep. at 63:3-64:2.
[122] *See* Torres Babcock & Wilcox Trust Claim at WK 0001 (GST-4927); 7/16/09 Torres Dep. at 1 (GST-4639).
[123] Committee Appendix II at 52.
[124] 7/16/09 Torres Dep. at 69:17-25 (GST-4639) (emphasis added).
[125] Committee Appendix II at 52.
[126] 2/17/10 Torres Trial Tr. at 45:20-22 (GST-4850).
[127] Committee Appendix II at 52.
[128] *Id.* at 52.
[129] Weikel Dep. at 173:12-16, 173:25-174:11 (ACC-6201).

While arguing that Garlock mischaracterized the deposition testimony of Messrs. Chandler and Finley about Williams Kherkher's trust claim filing procedures, the Committee itself gives a misleading summary of the testimony.[130] The Committee claims that Mr. Chandler did not distinguish between legitimate and deferral trust claims, and that Garlock's attorney misled Mr. Finley with the following question: "Q. . . . I understood Mr. Chandler to say *yesterday* that there were two types of claims, a legitimate claim and a deferral claim."[131] The Committee purports to prove this was a misleading question with a quote from Mr. Chandler's January deposition, more than *three months* before Mr. Finley's deposition.[132] In fact, in Mr. Chandler's deposition *the day before* Mr. Finley's deposition, Mr. Chandler did distinguish between legitimate and deferral claims:

> Q. Would -- would you typically disclose a deferral claim?
> . . .
> A. Mr. Torres didn't know the identity of any products or equipment. So the answer to the product identification questions were what Mr. Torres knew. The deferral claim, I didn't know anything about it. I would have had to look at it and know: *Is this a legitimate claim or is this just something we're filing to preserve a statute here*, and we don't really know if ultimately we're going to have a claim? So I would have to see what we knew at the time. And what I knew at the time was nothing about a Babcock & Wilcox claim.[133]

> Q. All right. How about a deferral claim? Would that have [been disclosed?]
> A. Not necessarily. Because a deferral claim doesn't represent that we actually believe we have a *legitimate claim.*[134]

Moreover, in Mr. Finley's deposition, Garlock's attorney even gave Mr. Finley a chance to contest the premise of the question:

> Q. . . . I understood Mr. Chandler to say yesterday that there were two types of claims, a legitimate claim and a deferral claim. *Did you hear him talking that way?*
> A. *He was incorrect.*
> Q. Okay. All the claims are legitimate claims, right?
> A. Any claim that I file is legitimate. I have some basis for filing the claim.
> Q. And some of those claims are then deferred?
> A. Correct. Some claims are later withdrawn.[135]

Accordingly, Garlock correctly described the deposition testimony of Messrs. Chandler and Finley about Williams Kherkher's trust claim filing procedures, and the Committee once again is guilty of distorting the record.

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[130] Committee Appendix II at 53.
[131] *Id.* (emphasis added).
[132] *Id.*
[133] 4/24/13 Chandler Dep. at 225:4-5, 225:16-226:3 (emphasis added).
[134] *Id.* at 226:15-19.
[135] Finley Dep. at 113:23-114:8.

Last, other contentions aside, the status of Garlock's adversary proceeding against Williams Kherkher and Troy Chandler arising out of their representation in *Phillips* renders the Committee's comments on the case meritless. Despite strenuous opposition from Williams Kherkher, Chandler, and the Committee,[136] the Court denied the defendants' motion for summary judgment on September 17, 2013. Garlock need not reiterate its contentions regarding fraudulent suppression of evidence in the *Phillips* case that the Court already has decided, at a bare minimum, raise genuine issues for trial.

Shein Law Center Designated Plaintiffs

The Committee continues its pattern of mischaracterizing the record in its summaries of the Shein Law Center's *Massinger*, *Brennan*, and *Golini* cases.

In *Massinger*, the plaintiff alleged that his asbestos exposure came from his father, who would come home from his shipyard job with asbestos dust on his clothes.[137] Mr. Massinger testified that, to the best of his knowledge, he "never worked directly with [asbestos]."[138] Mr. Massinger did say he "may have" worked around asbestos in some of his jobs, but these disclosures were so vague that they were useless.[139] Moreover, when asked specifically about his asbestos exposures at various Air Force bases, Mr. Massinger gave flat denials:

- Lackland Air Force Base: "Q. Do you know if you worked with or around any asbestos-containing products through that six week basic training [in Lackland, Texas]? A. No. It was a training environment, classroom type environment. No."[140]

- Sheppard Air Force Base: "Q. Do you know if you [] worked with or around any asbestos-containing products through that nine week technical training [at Sheppard Air Force Base in Wichita Falls, Texas]? A. No. It was another pretty much clean environment."[141]

- Dover Air Force Base: "Q. . . . [D]id you work with or around any asbestos-containing products at this job as a power production technician at the Dover, Delaware base? A. At Dover, no."[142]

[136] Committee Appendix II at 55-59.
[137] 7/2/08 Massinger Dep. at 27:25-28:11 (GST-3673) ("Q. Do you believe that you have been exposed to asbestos in your lifetime? . . . A. I'm sure I have –. Q. How? A. – as a result of what I have now. From exposure from my dad. He was a—he worked as a welder in a local shipyard, at Sun Ship, and from exposure from being around him and his work clothes.").
[138] 7/2/08 Massinger Dep. at 26:18-27:4 (GST-3673).
[139] *Id.* at 27:12-23; *see also* Plaintiffs' Answers to Asbestos Claims Facility Defendants' General Interrogatories-Sets I and II at GST-EST-0179110 (GST-3641) (stating that Massinger "may have been exposed to asbestos insulation products" in the U.S. Air Force from 1978 to 2003); 7/2/08 Massinger Dep. at 31:22-33:15 (GST-3671) (stating that, while working at an Air Force power plant in Alaska from 1988 to 1989, other workers may have been working with asbestos-containing products near Mr. Massinger, but "I can't say for sure").
[140] 7/2/08 Massinger Dep. at 23:16-19 (GST-3671).
[141] *Id.* at 25:15-19; 7/2/08 Massinger Dep. at 14:4-10 (GST-3673).
[142] 7/2/08 Massinger Dep. at 27:12-16 (GST-3671).

The Committee contends that this deposition testimony can be harmonized with Mr. Massinger's sworn affidavits in his undisclosed Shook & Fletcher and Fibreboard trust claims.[143] These affidavits, however, attested to Mr. Massinger's knowledge of exposures to asbestos-containing products at the Lackland, Sheppard, and Dover Air Force Bases:

> "I have personal knowledge of the facts hereinafter set forth . . . . I was [] employed by the United States Air Force from 1978-2003 as a power engineer and was exposed to asbestos containing products at the following sites:
>
> Lackland AFB, TX 1978-1979
> Shepherd [sic] AFB, TX 1979-1979
> Dover AFB, Delaware 1979-1980
>
> I worked with and in the vicinity [of] other tradesmen who used asbestos containing products during my job of maintaining and testing the backup power equipment. Use of those products created dust which I inhaled."[144]

Thus, the affidavits contradict Mr. Massinger's flat denials of exposure in his deposition. In contrast to Mr. Massinger's equivocal answers in discovery about possibly being exposed to asbestos in the Air Force, these admissions of direct, rather than secondary, asbestos exposure would have dramatically changed Garlock's assessment of Mr. Massinger's case.[145] Significantly, the Early firm filed the Fibreboard trust claim, and Mr. Massinger signed the supporting affidavit *before* the trial against Garlock.[146]

Next, the Committee tries to minimize the omissions in the *Brennan* case by claiming that generic insulation exposure was disclosed in the tort litigation, and that knowing the specific brands of these products would not have reduced Garlock's trial risk.[147] The Committee bases its argument on Pennsylvania law concerning allocation of responsibility to bankrupt entities.[148] Even if this narrow legal point is correct, disclosure of specific brands of insulation is material evidence that is extremely significant to Garlock's defenses. For instance, knowing the specific brands allowed Garlock to prove the amosite concentration in the insulation and would have prevented the plaintiff from claiming that the insulation exposures were mostly or all chrysotile-based.[149]

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[143] Committee Appendix II at 61.
[144] Affidavit of Bernard F. Massinger at Shein 00788 (GST-3686) (supporting Fibreboard trust claim); *see also* Affidavit of Bernard F. Massinger at Shein 01357 (GST-3691) (supporting Shook & Fletcher trust claim).
[145] Tr. 2291:6-2292:2 (Turlik).
[146] *See* Data concerning Mr. Massinger received from Delaware Claims Processing Facility, LLC pursuant to Court-ordered subpoena (GST-1600); Affidavit of Bernard F. Massinger at Shein 00788 (GST-3686) (supporting Fibreboard trust claim). The Fibreboard claim was one of eleven trust claims and ballots based on exposures not identified in tort discovery that were filed for Mr. Massinger before Garlock settled the case at trial. *See* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases at 18-19 (GST-8011).
[147] Committee Appendix II at 64.
[148] *Id.* at 64.
[149] Tr. 2255:22-2256:24, 2345:24-2346:8, 2348:10-13 (Turlik); *see generally* Debtors' Response Br. at Part I.C.

The Committee also contends that "Mr. Turlik testified that the *Brennan* case was resolved with no bankrupt entities having been identified because Garlock decided not to engage in a costly work-up process."[150] The Committee misstates the record. Mr. Turlik testified that the *Brennan* interrogatory responses did not identify any exposures to bankrupt entities' products.[151] In an attempt to find these missing exposures to develop the *Brennan* case for trial, Garlock would have had to do a "costly investigation."[152] Garlock settled the case before this investigation as part of a larger group settlement with the Shein Law Center.[153] Thus, the lack of bankrupt entity identification was not *because of* Garlock's decision to settle the case before its investigation. Rather, it was because the Shein Law Center concealed these exposures during the tort litigation and delayed its trust claim filings until after the case was resolved. In the aggregate, this widespread concealment significantly increased Garlock's defense costs and compelled it to settle cases—even at higher-than-normal values—to avoid these costs.[154]

Not surprisingly, the discussion of *Golini* is relegated to the end of the Committee's Appendix II. The Committee first refers to post-settlement communications between Messrs. Shein, and Turlik about *Golini* and implies that Garlock settled the case without discovery.[155] In fact, Garlock received written discovery in *Golini* and actively participated in all three days of Mr. Golini's deposition.[156] Discovery, however, did not reveal any brands of insulation products to which Mr. Golini was exposed. Importantly, Mr. Golini's interrogatory responses did not disclose any exposures to bankrupt entities' products.[157] Further, Mr. Golini testified that he either never saw or encountered products manufactured by Owens Corning (Kaylo), Fibreboard, Armstrong, and Eagle Picher.[158] *Before* he answered interrogatories or sat for his deposition, however, Mr. Golini already had signed sworn statements attesting to frequent, regular, and proximate exposure to fourteen particular asbestos products manufactured by reorganized defendants, including products manufactured by Armstrong (pipe covering), Fibreboard (Pabco pipe covering), Owens Corning (Kaylo pipe covering), and Eagle Picher (Super 66 and One-Cote cement).[159]

[150] Committee Appendix II at 63.
[151] Tr. 2301:8-2302:5 (Turlik).
[152] Tr. 2302:24:2303:5 (Turlik).
[153] Tr. 2303:20-23 (Turlik).
[154] Tr. 2257:4-20 (Turlik).
[155] Committee Appendix II at 64-65.
[156] *See, e.g.*, 8/11/09 Golini Dep. at 206-21 (GST-2840) (Garlock's counsel questioning Mr. Golini).
[157] Plaintiffs' Answers to Asbestos Claims Facility Defendants' General Interrogatories—Sets I and II (July 29, 2009) at 3 (requiring Mr. Golini to, among other things, "List, by type, brand and/or trade name, and manufacturer, every asbestos-containing product to which you believe you were exposed.") (GST-2847).
[158] 8/10/09 Golini Dep. at 32:15-35:14 (GST-2842).
[159] Sworn Statement of Vincent Golini at Shein 01901 (GST-2887) (attesting to Armstrong World Industries pipecovering exposure); Sworn Statement of Vincent Golini at Shein 01163 (GST-2877) (attesting to Pabco asbestos pipecovering exposure); Sworn Statement of Vincent Golini at Shein 01192 (GST-2878) (attesting to Kaylo pipecovering exposure); Sworn Statement of Vincent Golini at Shein 00672 (GST-2870) (attesting to Super 66 and One-Cote asbestos cement exposures); *see also* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases (GST-8011).

The Committee tries, without success, to minimize the significance of these omissions.[160] First, the Committee points out that there is no evidence that Garlock actually spent money investigating these concealed exposures.[161] But the Committee misses the point—Mr. Turlik's testimony demonstrates that the *anticipated* costs of independently investigating Mr. Golini's concealed exposures caused Garlock to settle the *Golini* case at an artificially high value.[162] Second, the Committee reiterates its contention that Garlock already had information about these exposures from ship records and its knowledge of the Philadelphia Naval Shipyard.[163] Garlock established, though, that ship records and other historical records hold little persuasive weight at trial, as the most critical exposure evidence for Garlock's defense comes from the plaintiff's personal knowledge.[164] Finally, in the last page of the Committee's Appendix II, the Committee tries to write off the *Golini* case as an aberration, admitting that the concealment of Mr. Golini's insulation exposures was a "mistake," and that the circumstances under which the affidavits were prepared are "unexplained."[165] The record, however, shows that *Golini* is far from a mistake or aberration: Mr. Shein expressly stated that his duty is to "maximize [his clients'] recovery, okay, and the best way for me to maximize their recovery is to proceed against the solvent viable non-bankrupt defendants first, and then if appropriate, to proceed against the bankrupt companies."[166] The practice of concealing exposures in *Golini*, while more obvious than in other cases, is consistent with the other Designated Plaintiff cases.[167]

[160] The Committee also highlights Mr. Golini's generic insulation disclosures and repeats that specific manufacturer identifications would not have decreased Garlock's trial risk under then-applicable Pennsylvania law. Committee Appendix II at 65. Garlock refutes this same contention above in its discussion of the *Brennan* case.
[161] Committee Appendix II at 66.
[162] Tr. 2286:18-2287:5 (Turlik).
[163] Committee Appendix II at 66-67. The Committee reiterates its contention that Garlock failed to produce in discovery in this proceeding reports that it had McCaffery & Associates prepare about the products used on Essex-class ships. Committee Appendix II at 66-67. To the contrary, Garlock conducted a diligent search during discovery to find responsive documents and fully complied with its production obligations. Garlock did not find, and thus was not able to produce during discovery, the reports that the Committee references.
[164] Tr. 2253:16-24, 2308:17-2309:24 (Turlik); *see also* Shein Dep. at 110:12-20 (agreeing that exposure evidence from the plaintiff's mouth is "compelling").
[165] Committee Appendix II at 67.
[166] Shein Dep. at 43:20-43:22, 43:24-43:25, 44:2-45:2; *see also id.* at 64:22-65:16 (testifying that he would not have expected personnel at his firm who prepared and had Mr. Golini sign sworn statements attesting to specific product exposures to share that exposure information with the attorneys in his firm who prepared Mr. Golini for and presented him at his deposition).
[167] *See generally* Debtors' Summary of Evidence Regarding Certain RFA List 1.A Cases (GST-8011).

This 26th day of November, 2013.

Respectfully submitted,

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